

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>DAVID B. SIMONS,</b>	)	<b>CASE NO. 1:13CR00287</b>
	)	<b>1:16CV00452</b>
	)	
<b>Petitioner,</b>	)	<b>JUDGE JOHN R. ADAMS</b>
	)	
<b>v.</b>	)	
	)	
<b>UNITED STATES OF AMERICA,</b>	)	<b>MEMORANDUM OPINION</b>
	)	<b>AND ORDER</b>
<b>Respondent.</b>	)	<b>(Resolving Doc. 46)</b>
	)	

The instant matter is before the Court upon Petitioner David B. Simons’ *pro se* Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody, filed pursuant to 28 U.S.C. § 2255. Doc. 46. After reviewing the motion and applicable law, Simons’ motion for relief under §2255 is DENIED.

“To prevail under 28 U.S.C. § 2255, a defendant must show a ‘fundamental defect’ in the proceedings which necessarily results in a complete miscarriage of justice or an egregious error violative of due process.” *Gall v. United States*, 21 F.3d 107, 109 (6th Cir. 1994). A federal district court may grant relief to a prisoner in custody only if the petitioner can “demonstrate the existence of an error of constitutional magnitude which had a substantial and injurious effect or influence on the guilty plea or the jury’s verdict.” *Griffin v. United States*, 330 F.3d 733, 736 (6th Cir. 2003).

In his single assignment of error, Simons argues that this Court is not authorized under Article III of the United States Constitution but instead, is a legislative-territorial court under Article I. Simons is mistaken. This Court is indeed authorized under Article III and therefore had appropriate constitutional authority and jurisdiction over Simons and his criminal case. As such, Simons’ only ground for relief is without merit.

For the foregoing reasons, Petitioner David B. Simons' Motion to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody under 28 U.S.C. § 2255 is hereby **DENIED**. Furthermore, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability pursuant to 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

**IT IS SO ORDERED.**

Dated: January 25, 2017

/s/ John R. Adams  
**JOHN R. ADAMS**  
**UNITED STATES DISTRICT JUDGE**